

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE
LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY
HEALTH AND SECURITY FUND,
et al.,

Plaintiffs,

v.

FENIX EARTHWORKS, LLC,

Defendant.

CASE NO. C22-0799JLR

ORDER

Before the court is a stipulated motion for leave to withdraw as counsel of record for Defendant Fenix Earthworks, LLC (“Fenix Earthworks”). (Stip. Mot. (Dkt. # 29).) Defense counsel Andrew M. Wagley seeks to withdraw due to Fenix Earthworks’s “inability to continue to pay legal counsel and the winding up of the business entity.” (*Id.*

1 at 4.) The parties also “stipulate to an extension of all deadlines contained in the Court’s
 2 Civil Case Schedule Order as necessary.” (*Id.* at 5; *see also* 12/14/22 Min. Order (Dkt.
 3 # 27).) The court has considered the motion, the relevant portions of the record, and the
 4 applicable law. Being fully advised, the court GRANTS in part and DENIES in part the
 5 parties’ stipulated motion for leave to withdraw.

6 An attorney seeking to withdraw from a case in a manner that will leave a party to
 7 the case unrepresented must seek the court’s leave to do so by filing a motion. *See* Local
 8 Rules W.D. Wash. LCR 83.2(b)(1). Pursuant to Local Civil Rule 83.2(b)(1), a motion to
 9 withdraw must contain a certification that it was served on the client and opposing
 10 counsel and must also provide the client’s contact information. *Id.* Additionally, if
 11 withdrawal will leave a business entity unrepresented, counsel must certify that:

12 [H]e or she has advised the business entity that it is required by law to be
 13 represented by an attorney admitted to practice before this court and that
 14 failure to obtain a replacement attorney by the date the withdrawal is
 15 effective may result in the dismissal of the business entity's claims for failure
 16 to prosecute and/or entry of default against the business entity as to any
 17 claims of other parties.

18 *Id.* LCR 83.2(b)(4). “The attorney will ordinarily be permitted to withdraw until sixty
 19 days before the discovery cut off date in a civil case” *Id.* LCR 83.2(b)(1).

20 “Courts generally consider several factors when ‘evaluating a motion to withdraw,
 21 including (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may
 22 cause to other litigants; (3) the harm withdrawal might cause to the administration of
 justice; and (4) the degree to which withdrawal will delay the resolution of the case.’”

Pac. Survey Grp., LLC v. Tyche High Seas Cap. Corp., No. C21-1712JLR, 2023 WL

1 4624469, at *2 (W.D. Wash. July 19, 2023) (quoting *Curtis v. Illumination Arts, Inc.*, No.
2 C12-0991JLR, 2014 WL 556010, at *4 (W.D. Wash. Feb. 12, 2014)). “The trial court
3 retains wide discretion in a civil case to grant or deny [a] motion to withdraw.” *Id.*
4 (quoting *Curtis*, 2014 WL 556010, at *4).

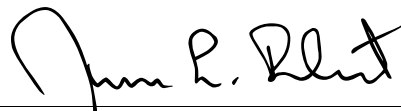
5 Here, the parties’ stipulated motion meets the technical requirements of Local
6 Civil Rule 83.2(b)(1) because it includes a certification that it was served on Fenix
7 Earthworks and opposing counsel, it is signed by Fenix Earthworks and opposing
8 counsel, and it provides Fenix Earthworks’s address and telephone number. (*See* Stip.
9 Mot. at 4-6, 9); Local Rules W.D. Wash. LCR 83.2(b)(1). The motion also includes a
10 certification that Mr. Wagley advised Fenix Earthworks that it is required by law to be
11 represented by an attorney admitted to practice in this district and that failure to obtain a
12 replacement attorney may result in the entry of default against it. (*See* Stip. Mot. at 7);
13 Local Rules W.D. Wash. LCR 83.2(b)(4). Fenix Earthworks Member Christopher
14 Adams consents to the withdrawal and understands that the failure to secure new counsel
15 may result in default. (Stip. Mot. at 8.) Although the instant motion comes after the
16 discovery cutoff, which was January 22, 2024 (12/14/22 Min. Order at 1), “[n]o party has
17 opposed the motion to withdraw or claimed that the withdrawal would cause prejudice.”
18 *Russell v. Samec*, No. C20-0263RSM-JRC, 2021 WL 3130053, at *1 (W.D. Wash. July
19 23, 2021) (granting motion to withdraw after the discovery cutoff). The court concludes
20 that the timing of the motion does not preclude withdrawal.

21 Turning to the merits, Mr. Wagley seeks to withdraw based on Fenix Earthworks’s
22 insolvency and inability to pay litigation costs. (Stip. Mot. at 4.) This court has

1 previously granted withdrawal on identical grounds. *Pac. Survey Grp., LLC*, 2023 WL
2 4624469, at *2 (granting withdrawal of counsel to a party that was “insolvent and [could]
3 no longer compensate [counsel] for their services,” where no party argued it would be
4 prejudiced by withdrawal). Moreover, the parties have stipulated to withdrawal and no
5 one argues prejudice will result from withdrawal. (*See generally* Stip. Mot.; Dkt.)

6 Accordingly, the court GRANTS in part the parties’ stipulated motion (Dkt. # 29)
7 and ORDERS that the withdrawal of Andrew M. Wagley of Etter, McMahon,
8 Lamberson, Van Wert & Oreskovich P.C. shall be effective February 20, 2024. (*See*
9 Prop. Order (Dkt. # 29) (requesting an effective date for the withdrawal of two weeks
10 from the date the court enters its order).) Fenix Earthworks must find substitute counsel,
11 if any, and notify the court and all parties to this matter of the same by no later than
12 **February 20, 2024**. Failure to do so may result in the entry of default against Fenix
13 Earthworks. The court DENIES the stipulated motion to the extent the parties request an
14 extension of pretrial deadlines in this matter. (*See* Stip. Mot. at 5.) Dispositive motions
15 remain due by no later than **February 20, 2024**. Mr. Wagley is DIRECTED to provide a
16 copy of this order to Mr. Adams.

17 Dated this 5th day of February, 2024.

18 
19 JAMES L. ROBART
20 United States District Judge
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